

ADDENDUM

ADDENDUM EXHIBIT F

MBIA Ins. Corp. v. Countrywide Home Loans, Inc., No. 602825/08, Stipulated Order Regarding Pretrial Schedule (N.Y. Sup. Ct. May 24, 2011)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

RECEIVED

MAY 23 2011

PART 3
NYS SUPREME COURT - CIVIL

MBIA Insurance Corporation

Plaintiff,

Index No. 602825/08

-against-

IAS Part 3 (Bransten, J.)

Countrywide Home Loans, Inc., Countrywide
Securities Corp., Countrywide Financial Corp.,
Countrywide Home Loans Servicing, L.P. and
Bank of America Corp.,~~PROPOSED~~ STIPULATED ORDER
REGARDING PRETRIAL SCHEDULE

Defendants.

~~PROPOSED~~ STIPULATED ORDER REGARDING PRETRIAL SCHEDULE

IT IS HEREBY STIPULATED AND AGREED by and between counsel for the Plaintiff MBIA Insurance Corporation ("MBIA"), counsel for Defendants Countrywide Home Loans, Inc., Countrywide Securities Corporation, Countrywide Financial Corporation, Countrywide Home Loans Servicing, L.P. (collectively, "Countrywide"), and counsel for Defendant Bank of America Corporation ("BAC") that:

1. Production of Documents from Ten Additional Countrywide Custodians:

(a) Countrywide has completed its collection of responsive documents for the following ten additional Countrywide custodians: (i) Wei Wang, (ii) Steve Trentacosta, (iii) Karen Jewett, (iv) Jeff Speakes, (v) Scott Spear, (vi) Kevin John, (vii) Ken Scheller, (viii) Carol Leys, (ix) Vivian Daily, and (x) William Endicott.

(b) On or before June 3, 2011, Countrywide shall complete its production of responsive documents for the first eight additional Countrywide custodians identified in Paragraph 1(a), *supra*.

(c) On or before June 10, 2011, Countrywide shall complete its

¹ The schedule below is based on the parties' current understanding as to the scope of outstanding discovery. Should the scope of discovery change substantially, the parties reserve the right to seek leave of the Court to further modify this schedule to address, among other things, the deadlines for expert disclosures and discovery and summary judgment on the successor-liability claim.

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production of responsive documents for the final two additional Countrywide custodians identified in Paragraph 1(a), *supra*.

2. Production of Documents from Two Additional BAC Custodians: On or before June 17, 2011, BAC shall complete its production of responsive documents for the following two additional BAC custodians: (i) Michael Friedlander; (ii) Greg Hobby.

3. Completion of All Document Production:

(a) All document discovery by the parties shall be completed on or before June 17, 2011.

(b) On or before June 30, 2011, the parties shall exchange supplemental privilege logs for any documents withheld, in whole or in part, on the basis of privilege, or clawed back between November 30, 2010 and June 17, 2011.

4. A status conference shall be held on or about August 1, 2011, or at such time that is convenient for the Court. August 15, 2011, at 2:15 p.m., or a nearby date convenient to the parties and the court.

5. Fact Depositions:

(a) On or before May 20, 2011 at 5:00 p.m., the parties shall exchange lists of: (i) all outstanding fact depositions and second day depositions (including all deponents identified in the parties' correspondence of April 14, 2011 and any additional requests for depositions made on or before May 6), and (ii) two to three proposed deposition dates for each deponent listed in Paragraph 5(a)(i) who is represented by (i) Quinn Emanuel Urquhart & Sullivan, LLP, (ii) Goodwin Procter LLP or Gunster, Yoakley & Stewart, P.A., or (iii) O'Melveny and Myers LLP.

(b) On or before May 27, 2011 at 5:00 p.m., the parties will agree on the dates that the witnesses listed in Paragraph 5(a) will be deposed.

(c) All depositions on oral questions of witnesses who are former and current employees of MBIA, the Countrywide Defendants, and any third party witnesses relevant to MBIA's claims of primary liability shall be completed on or before August 5, 2011.

(d) All depositions on oral questions of witnesses who are former and current employees of BAC relevant to MBIA's claim of successor liability shall be scheduled to commence no earlier than July 5, 2011, and shall be completed or stayed consistent with the Court's Order on BAC's Motion to Stay and Sever following the June 29, 2011 hearing on that motion.

(e) All fact deposition discovery, including any depositions of former

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or current employees of BAC subject to the Court's ruling at the June 29, 2011 hearing, shall be completed on or before October 7, 2011.

6. Expert Discovery

(a) Initial expert reports relating to primary liability against the Countrywide Defendants concerning issues on which each party bears the burden of proof shall be completed on or before September 12, 2011.

(b) Expert rebuttal reports relating to primary liability against the Countrywide Defendants shall be completed on or before October 31, 2011.

(c) Expert depositions relating to primary liability against the Countrywide Defendants concerning issues on which each party bears the burden shall be completed on or before November 18, 2011.

(d) If an expert surrebuttal report is filed by any expert, it shall be filed no later than seven (7) days before the taking of any related expert depositions and shall be limited to fifteen (15) pages.

(e) Initial expert reports on the issue of successor liability, if any, subject to the Court's ruling at the June 29, 2011 hearing, shall be completed on or before October 21, 2011.

(f) Expert rebuttal reports on the issue of successor liability, subject to the Court's ruling at the June 29, 2011 hearing, shall be completed on or before November 4, 2011.

(g) Expert depositions on the issue of successor liability, subject to the Court's ruling at the June 29, 2011 hearing, shall be completed on or before November 18, 2011.

7. A status conference shall be held on or about November 22, 2011.

8. MBIA shall file a note of issue/certificate of readiness on or about November 22,

2011.

9. Motions for Summary Judgment:

(a) Any motions for summary judgment shall be served by December 14, 2011.

(b) Answering briefs in response to any motion for summary judgment shall be served sixty (60) days after service of any motions for summary judgment.

(c) Reply briefs in support of summary judgment shall be served thirty (30) days after service of any answering briefs.

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10. Trial of this action will commence on _____ per order of the Court.

Completion of any appeals of
summary judgment decisions, upon
a date set as per

Dated: May 23, 2011
New York, New York

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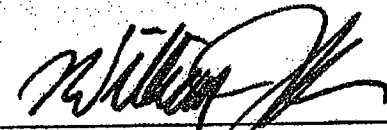
MBIA ... Countrywide

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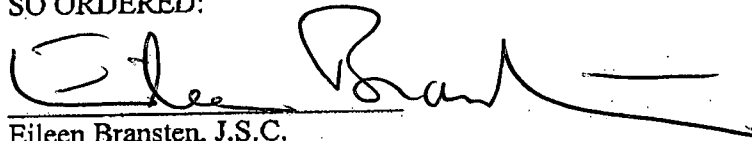
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*Attorneys for Defendant
Bank of America Corp.*

SO ORDERED:



Eileen Bransten, J.S.C.

24 day of May, 2011

ADDENDUM EXHIBIT G

Fed. Home Loan Bank of Chicago v. Banc of America Sec., LLC, No. 10-2-36526-5 SEA,
Excerpt of Hearing Transcript (Wash. Super. Ct. Feb. 8, 2013)

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

FEDERAL HOME LOAN BANK)	
OF CHICAGO,)	
)	
Plaintiffs,)	KING COUNTY CAUSE
)	No. 10-2-36526-5 SEA
vs.)	
)	
BANC OF AMERICA SECURITIES)	
LLC., ET AL.)	
)	
Defendants.)	

TRANSCRIPT OF PROCEEDINGS

February 8, 2013

BEFORE THE HONORABLE CATHERINE SHAFFER

JANET R. HOFFMAN
Official Court Reporter
King County Superior Court
516 Third Avenue, C912
Seattle, Washington, 98104
(206) 296-9177

A P P E A R A N C E S:

MS. AMY WILLIAMS-DERRY,
Attorneys at Law,

Appeared on behalf of the Plaintiffs;

MR. JOHN D. PERNICK,
Attorneys at Law,

Appeared on behalf of the Defendants WAMU

MR. CHRISTOPHER MALLOY
Attorney at Law
Appeared by Telephone

1 report from Dr. Cowan in July of last year
2 with a 95 percent confidence interval. It is
3 what Judge Rakoff did, it is what Judge Cote
4 did recently in the FHFA cases before her in
5 the Southern District of New York.

6 We have also proposed a sample design that
7 will allow for the plus or minus 5 percent
8 margin of error and that is the margin of
9 error that we are seeing in most of these
10 cases. Judge Cote, in fact, in FHFA cases
11 approved a sample methodology that would allow
12 for greater margin of error plus or minus 10
13 percent. So we are seeing 5 percent in most
14 of the cases, 10 percent in that case.

15 That case, of course, it is huge. It
16 involves almost 450 securitizations and I
17 believe over a million loans. So the sample
18 size there was significantly larger than the
19 sample size we are proposing here.

20 If I can direct Your Honor's attention to
21 the materials we have presented. Page 2 you
22 will see the five-step process that we have
23 outlined and I believe what we are asking you
24 to do today is consistent with what the
25 court's comments were steps 1 and 2, decide

1 sampling is appropriate and agree on a sample
2 design. The later steps we can address
3 later.

4 Defendants retain all of their ability to
5 challenge these other steps later. And that
6 is namely drawing the samples, testing the
7 samples, re-underwriting the samples and then
8 drawing any conclusions from those samples.

9 THE COURT: Let me jump into the area
10 where I am having problems here. I am not
11 having problems reaching the idea of whether
12 or not you presented a qualified expert and I
13 am not having problems with reaching to
14 whether or not sampling is or is not a
15 technique that raises Frye concerns.

16 I do have problems with agreeing on a
17 sample design because I don't think it is
18 appropriate for the court to get involved in
19 how the expert deploys their methodology.

20 And I also think that it could be an issue
21 that could be raised later as to
22 admissibility. I doubt it under the most
23 recent decisions from the State Supreme Court
24 which indicate that how the expert deploys an
25 accepted methodology is not for the trial

1 court, but for the trier of fact.

2 But I really have trouble with the idea
3 that I would also have any authority under
4 anything to decide as a matter of law that
5 this is an appropriate sample design.

6 MS. WILLIAMS-DERRY: I think that question
7 can be answered quite readily. And really,
8 when you look at Dr. Barnett's criticisms of
9 Dr. Cowan's report, they are really
10 observations. They are not really
11 criticisms.

12 Dr. Barnett is really in large part in
13 sync with what Dr. Cowan has proposed.

14 They both agree a 95 percent confidence
15 interval is standard, that a 5 percent margin
16 of error is appropriate here.

17 Dr. Barnett states and I think Dr. Cowan
18 handles this in his rebuttal report that he
19 believes some other smaller margins of error
20 may be appropriate. But he is referring to
21 things like public opinion polling, which are
22 clearly not applicable here.

23 Once you know the population and you agree
24 on the confidence interval and the margin of
25 error, it is a simple mathmatic formula that

1 be able to evaluate ultimately whether the
2 specific margin of error for each conclusion
3 that we seek to have drawn, whether that
4 margin of error is appropriate.

5 THE COURT: Thank you.

6 MR. PERNICK: My I just address --

7 THE COURT: No. It is a motion, the
8 person that brings the motion argues first,
9 then we get a response, then we get rebuttal
10 and then I rule. That is the way it works for
11 future reference.

12 All right folks. Let's turn to the
13 motion. I view this motion as much more
14 limited than the defendants, I think, were
15 afraid it might be. I do not view this as a
16 motion to admit an opinion that hasn't been
17 rendered yet which is essentially the gist of
18 the objection that I drew.

19 There are really three questions for the
20 court to determine before a jury considers an
21 expert opinion.

22 And the first is whether or not the expert
23 is qualified. Because, obviously, if the
24 expert lacks training and experience in the
25 field then they aren't going to be testifying

1 to the jury as to an expert opinion. There is
2 really no argument here about that.

3 These experts politely disagree with each
4 other, but nobody questions anybody else's
5 abilities and qualifications and that is very
6 understandable given how deep they are on both
7 sides. So it is clear that the plaintiff's
8 expert is eminently qualified. And I think I
9 can also say that doesn't seem to be disputed
10 in any way on this motion.

11 The second question is the methodology
12 used, since we are not a Daubert state by any
13 means, although we may be in the future in
14 some areas. We are still under Frye.

15 There is no question either that sampling
16 is a methodology that is widely accepted. Not
17 only in this field, but in litigation very,
18 very similar to this case. It has been used
19 over and over again, and I don't see any
20 serious claim by defendants of any sort that
21 this isn't an approved and accepted method so
22 it plainly meets the Frye standard.

23 The third issue is the one I am not
24 willing to address today and that is whether
25 or not the opinion that is ultimately rendered

1 will be helpful to the trier of fact. Because
2 that I think is where the real problem is
3 right now from the defendant's point of view
4 with agreeing to this motion and eliminating
5 the need for this hearing. And that goes to
6 the issue that the plaintiffs would like me to
7 resolve today, but I don't think I can, which
8 is the issue about whether the proposed sample
9 design is going to be helpful to the jury.

10 From my point of view, given what I know
11 about the plaintiff's allegations right now, I
12 don't see any reason why it wouldn't be. That
13 I can say. I don't have concerns. And I
14 don't think defendants are able to point to
15 any specific concerns as yet.

16 What they can say is down the road there
17 might be some. Because they aren't sure they
18 are at the bottom of what the plaintiff is
19 alleging here. So they are not sure,
20 depending on whether plaintiff's claims as to
21 what they relied upon changes or narrows,
22 whether or not the sample design is going to
23 be helpful to the jury or not. That is what I
24 hear them saying and I think that is a
25 legitimate point.

1 What I will say, it looks like it will be
2 helpful. It looks like a good sample design
3 to me and we will see after we get the results
4 whether it is or not and I will make that
5 determination as to admissibility. Once we
6 are past that point, it is up to the jury and
7 not me. Do you follow me? My gate in terms
8 of opening this evidence up to the jury swings
9 in this case as soon as it looks like it is
10 going to be helpful to the trier of fact.

11 But that is an issue I will sit on until
12 much later in this case. Certainly until this
13 discovery -- strike that -- this expert
14 assessment has been done.

15 I hope that meets everybody's concerns. I
16 think that allows the plaintiffs to move
17 forward with a relative degree of confidence.
18 Plaintiffs are in control of their own
19 allegations as to what they relied on and when
20 in this case and I think they have a pretty
21 good idea what that is.

22 Let's turn to our next order of business
23 which is your status conference. I am going
24 to excuse my court reporter and take off my
25 robe and step off the bench to meet with all

1 of you probably in the courtroom given the
2 volume of people we have today and we will see
3 if we can get an order on the status
4 conference too. I will talk to you informally
5 about the motion to compel at that point with
6 the understanding I can't say a lot given I
7 haven't read the response and reply and that
8 Chase isn't here.

9 MS. WILLIAMS-DERRY: I have an order on
10 the sampling motion. May I present that?

11 THE COURT: First show it to counsel.

12 MR. PERNICK: No. Is it the same order as
13 before?

14 MS. WILLIAMS-DERRY: No.

15 THE COURT: No. You look, you decide, and
16 you edit according to reflect my ruling. If
17 there is a fight about that, we will chat
18 about that at the status conference which is
19 going to be in a few minutes. Thanks
20 everybody. We are in recess.

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